

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

Jerry Ackerman Motor Company, Inc.

Employer

and

Case 14-RC-224185

**Automotive, Petroleum, Allied Industries and Airline
Employees Union Local No. 618**

Petitioner

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time parts department employees, sales porters, and service porters, including the shuttle driver employed by the Employer at its St. Louis, Missouri facility. The Employer maintains that the unit sought by Petitioner is not appropriate because the sales and service porters (collectively porters) and the parts department employees do not share a community of interest and, instead, there should be two separate units. The Employer concedes that the sales and service porters are in the same classification and constitute a separate appropriate unit. Petitioner and the Employer agree that the unit(s) should exclude office clerical employees, managers, temporary employees, confidential employees, and supervisors¹ as defined in the Act.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. For the reasons set forth below, based on the record and relevant Board law, I find that the petitioned-for unit of parts department employees and porters is inappropriate because the parts employees and porters do not share a community of interest sufficient to warrant a single bargaining unit. Accordingly, I shall direct elections in two separate units: a parts department unit and a porter unit.

I. THE EMPLOYER'S OPERATION

The Employer operates a Toyota automotive dealership selling new and used automobiles. The Employer also has service and parts departments. In these operations, the Employer employs several managers, sales staff, service, parts, and office employees. The Employer's general manager is responsible for its overall operations. Reporting directly to the general manager are all the department managers and the three sales porters. The sales porters also report to the used car manager. The three parts department employees report directly to the

¹ The parties stipulated that the general manager, used car manager, parts manager, and the service manager are supervisors within the meaning of Section 2(11) of the Act.

parts department manager. The three service porters and one shuttle driver² report directly to the service department manager.

The Employer's facility is currently housed in three separate buildings located on the same parcel of land. The sales department building houses a new car showroom with offices for the sales staff, finance director, comptroller, and office clerk, and an attached "garage" that houses the general manager and used car manager office, another outer showroom, and a break room. Located about 65 yards from the sales building is the Employer's detail building which houses a rack for alignments, a fenced-in area for storage of large parts, and an area where the service porters perform detail work on automobiles when they arrive new and prior to delivery to a customer. The third building at the Employer's facility is the service department. This building is across the parking lot from the sales department building, about 50 yards from the sales building. The service building houses a small drive-through where customers drop off and check-in their vehicles for service and a desk/counter area where the service writers work, a storage office, a break room, a customer waiting area, the technician service area, and an office for the cashier and warranty clerk. Behind this office is the parts department which has two counters, one for retail sales and one for the technicians to order and pick up parts need to repairs vehicles. The record does not reflect the distance between the detail building and the service building.

All the employees working in the sales building as well as the sales porters clock-in at the time clock in the sales building. The service and parts department employees clock-in in the service building. The three sales porters work staggered shifts to cover the hours the sales department is open. The record does not reflect the specific hours that the new or used car sale department is open. The service department is open from 7 a.m. to 6 p.m., Monday through Friday, and 8 a.m. to 2 p.m. on Saturday. The service porters work staggered shifts to cover the operating ours of the service department. The shuttle driver works Monday through Friday, 7 to 11 a.m. The parts department's hours are the same as the service department and its employees are scheduled to cover all of the operating hours.

Recently, in Case 14-RC-221143, District 9, International Union of Machinists and Aerospace Workers, AFL-CIO, was certified as the exclusive collective-bargaining representative of the Employer's full and part-time journeymen and apprentice technicians.

In late December 2018 or early 2019, the Employer's operation is projected to relocate into a new facility, still in St. Louis, Missouri consisting of only one building housing all the above-described departments.

² Hereafter, the service porters and the shuttle driver will be referred to collectively as the service porters.

II. COMMUNITY OF INTEREST

A. The Legal Standard

In accordance with Section 9(b) of the Act, “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof[.]” 29 U.S.C. § 159 (b). When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)).

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981).

The Act does not require a petitioner to seek representation of employees in the most appropriate unit, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996) (emphasis added). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). In order to find that a petitioned-for unit is appropriate where a party seeks to add employees to the petitioned-for unit, the Board must determine “whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit.” *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 6 (Dec. 15, 2017) (emphasis in original).

When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” *Wheel Island Gaming*, 355 NLRB 637, 637 (2010); *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether: (1) the employees sought are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 6 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). Particularly important in considering whether the

unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB at 2, fn. 5; *International Paper Company (Southern Kraft Division)*, 96 NLRB 295, 298, fn. 7 (1951) (holding that “[T]he manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination.”) With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). All relevant factors must be weighed in determining community of interest, including the Board’s established guidelines for appropriate unit configurations in specific industries. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 13.

Under current Board law, in contrast to the Board’s prior standard under *Specialty Healthcare*, “at no point does the burden shift to the employer to show that any additional employees it seeks to include share an overwhelming community of interest with employees in the petitioned-for unit.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 13 (overruling the Board’s previous decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enf’d. 727 F.3d 552 (6th Cir. 2013)). Rather, “[p]arties who believe that a petitioned-for group improperly excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group will, of course, introduce evidence in support of their position.” *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 13.

B. The Facts

1. The Sales Porters

As described above, the sales porters are in the sales department and report directly to the general manager and the used car manager. The three sales porters’ duties are all the same and include cleaning and detailing every new and used car that arrives off a transport truck or is traded-in and checking it into the Employer’s inventory. The detailing work is performed in the detail building. When a car is sold to a customer, a sales porter again cleans and details the car readying it for delivery. The sales porters sign off on each car prior to delivery to the customer indicating that the vehicle’s interior and exterior is clean and that there are no dents or scratches. Throughout the day, the sales porters will also clean the new and used cars parked on the lots so they are clean at all times. The sales porters are also responsible for cleaning all of the areas of the sales and detail buildings as well as the outside car lot area and cutting the grass. During inclement weather the sales porters insure that snow is removed and salt placed on walkways. On occasion, the sales porters may be asked to get lunch for the manager and do other odd jobs as needed.

Two of the sales porters earn between \$15.25 and \$15.75 an hour while the third porter, who is still in his probationary period, earns \$12.50 per hour. They use the time clock located in the sales building. The record does not contain any evidence regarding the sales porters other benefits. Sales porters' breaks are taken in the break room in the detail shop, outside, or in their personal vehicle. No specialized training or education is required for the sales porter position. The only special equipment that sales porters might use in their daily tasks is a buffer and a power washer. The sales porters wear Employer provided gray short or long-sleeved shirts and pants or they can wear their own shorts.

The sales porters have brief, occasional contact with the parts department employees. For example, if a parts department employee needs to retrieve a large part from the fenced-in parts area located in the detail building and a vehicle is parked in front of the entrance, blocking it, the sales porter may be asked by the parts employee to move the vehicle or give the keys to the parts employee to do it himself. At times, if the part being retrieved is very large, a sales porter may voluntarily assist the parts employee. Some chemicals that the sales porters use when detailing cars are stored in the parts area in the service building requiring the sales porter to go to the service building parts area to retrieve it but they do not have to check it out or order it through a parts employee. In addition, when parts employees need to wash a rental car they may interact with the sales porters in the wash bay area. Lastly, if a sales porter needs a license plate frame or screws they may go to the parts department to ask for those items. The record does not reflect how frequently any of these interactions occur, other than described as "occasionally," but not daily, and involving only a few minutes of time. The only specific example of interchange among employees in the sought after classifications occurred about three years ago when a sales porter requested to take a position in the parts department. On occasion, when a current sales porter is absent, that parts department employee may be asked to help the other sales porters due to his previous work in the sale department. There is no evidence of regular interchange between the sales porters and the parts department employees.

With respect to the sales porters contact with the service department employees, it is limited to the transferring of automobile keys that the sales porters receive when checking-in a new or used vehicle, or when a vehicle needs service before it can be placed on the sale lot.

2. *The Service Porters*

The three service porters and the shuttle driver all report to the service department manager and work from the service department building. The shuttle driver's only responsibility is to shuttle customers from the service department to their homes or offices when they drop off a vehicle for service. The service porters greet customers when they arrive to drop off their vehicles for service, take the customer's keys and attach them to a ticket and place paper floor mats on the vehicle's floor. The service porter then drives the customer's vehicle to an out lot where a technician will retrieve it for repair. When the service is finished the service porter is

paged and he drives the customer's car to the door near the waiting room and provides the keys to the customer. On occasion, the service porters may wash and wipe down a customer's car. At times the service porter will assist a technician during service by testing the lights and signals. The service porters are also responsible for keeping the customer drop off area dry and clean to prevent slips and falls as well as cleaning the technicians' area, upstairs break room, and occasional weeding around the service building. In inclement weather they are also responsible for snow removal and salting to keep the customer pathways safe.

The record does not reflect the wage rates or benefits for the service porters. They use the time clock in the service building to record their time. They can take their breaks in the service building's upstairs break room. No training or education is required for the service porter shuttle driver position other than a drivers' license, nor do the service porters work with any specialized tools or equipment. The service porters wear the same Employer-provided uniforms as the sales porters.

With respect to interaction between the service porters and the parts department employees, they are housed in the same building; however, their interaction is limited. For example, a service writer may ask a service porter to retrieve a customer's automobile file from the file room located in the parts department, but that does not require a parts employee's assistance. Also, they may interact just in passing or while in the break room. There has been no interchange between the service porters and the parts department employees, and at no time has a service porter performed any parts related work. If a service porter is temporarily absent, his position is not filled by anyone from another department.

3. *The Parts Department Employees*

The parts department consists of two counter men and a driver/parts counter trainee, all of whom report to the parts department manager. The parts department is located in the service building; however, they also maintain an area for larger parts, such as tires, in a fenced-in area located inside the detail building. The parts manager is responsible for the ordering of parts. The two counter men's primary responsibilities are to supply the technicians with parts and materials needed to service customer's vehicles. The technicians get their parts from the technician counter they are not delivered to them. About ten to fifteen percent of the time, the counter men are getting parts directly for customers who call or come in seeking parts for their personal use. If a specific part is not in the Employer's inventory, the parts driver/trainee will go to another dealer or store to get the needed part. Each night the parts employees retrieve parts from a locked up cage area where the Toyota factory has delivered ordered parts and stock shelves with these parts and take inventory. If a specific part has already been purchased by a customer that part is tagged with the customer's name. When parts are initially received, the counter man enters the part number into the Employer's computer. No other employees work on the parts computer, man the customer or technician counter, or retrieve or stock parts. During

the first hour of the day, the counter men also do cashier work for the service department until the receptionist arrives. Lastly, the counter man answer telephone calls directed to the parts department.

No evidence was presented regarding the wages or benefits that the parts department employees receive, nor where they take their breaks. They clock-in using the time clock located in the service building. Toyota requires the parts department employees to take on-line training courses to learn about new parts or other parts related issues. Other than the parts computer, the parts employees do not use any other specialized equipment or tools.

With respect to interaction between the parts department employees and the porters, this is described above. The parts department employees also have minimal contact with the sales department employees when an item ordered by the sales department is delivered to the parts department, the counter men or driver/trainee will deliver the item or mail to the sales building. If a parts department employee is absent temporarily, his position is not filled, rather the department makes due with the employees on hand in the department.

C. Analysis

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, at 723 (1996). As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. *Id.* When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *PCC Structural, Inc.*, 365 NLRB No. 160 (2017); *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, *supra* at fn. 5. However, *all* relevant factors must be weighed in determining community of interest.

1. *Organization of the Plant - Separate Departments*

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See, *Check Printers, Inc.* 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289 and 1291 (2000). In this case, the unit sought by Petitioner is arbitrary in that it does not conform to an administrative grouping because all three classifications are in separate departments with separate supervision.

2. *The Nature of Employee Skills and Functions*

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

In this case, the record reveals that employees in the single unit the Petitioner seeks to represent have separate job functions, duties, and skills from each other. More specifically, the record reveals that the sales porters, service porters, and parts department employees' duties are solely related to their assigned department. The sales porters' primary duties are to detail new and used cars and to maintain the sales building and grounds. The service porters greet customers arriving and departing from service, tag customer keys, place floor mats in vehicles, and assist the technicians. Lastly, the parts department employees only work in the parts department, stocking, retrieving, and handing out parts. No special skills or education are required for any of these classifications, except that the parts department employees take on-line Toyota classes to be knowledgeable about parts and they use the parts computer.

3. *Degree of Functional Integration*

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists

when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight. Here, the record reveals that the parts department employees and porters the Petitioner seeks to include in one unit are not functionally integrated. More specifically, as set forth above, each classification is in a different department, and the sales porters are located in a different building than the service porters and parts department employees. Furthermore, the job duties for which each group is primarily responsible are unrelated to, and independent of, the other classifications' primary tasks. The sales porters' detailing of new and used cars is performed without any input or assistance from the parts department, and the parts department's job of stocking, inventorying, and distributing parts occurs absent any assistance from the porters.

4. *Interchangeability and Contact among Employees*

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp.*, supra. In this case, the record fails to reveal evidence of significant employee interchange between the employees the Petitioner seeks to represent. More specifically, the record reveals only one example when an employee in the parts department fills in when a sales porter is absent. This interchange occurs because that parts department employee was initially employed as a sales porter, but three years ago requested to fill a vacancy in the parts department. There is no other employee interchange among the other employees in the three classifications sought.

Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). There is little evidence of work-related contact between the employees the Petitioner seeks to represent in one unit, and little or no evidence that they work in the same areas. Rather, any contact is brief, occasional, and limited to requests to unblock the fenced in

area in the detail building or to volunteer to assist in moving a heavy part. The Board has held that sporadic instances of employees assisting with another department's tasks reflect "a spirit of cooperation or civility", rather than overlap of job functions. See *Ore-Ida Foods*, 313 NLRB 1016 (1994); *Maxim's De Paris Suite Hotel*, 284 NLRB 377, 378 (1987); *Omni International Hotel*, 283 NLRB 475 (1987).

5. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion; whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies, and other terms of employment that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits, or are subject to common work rules, does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange, and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks, and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation*, 221 NLRB 1145 (1996).

In the instant case, the record fails to reflect the service porters and parts department employees' wages and no evidence was elicited regarding any other benefits or terms of employment for these classifications. The record does reflect that the Employer has a personnel department that covers all of the Employer's employees.

6. Common Supervision

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn 11. Rather, more important is the degree of interchange, contact, and functional integration. *Id.* at 607.

In this case, the record reveals that the three groups of employees sought are separately supervised as they are in separate departments. More specifically, the sales porters are supervised by the general manager and the used car manager; the parts department employees are supervised by the parts department manager; and the service porters and shuttle driver are supervised by the service department manager. There is no evidence of even temporary supervision of employees by a different department supervisor. The only specific example of a supervisor being absent was the service manager, and another employee in the service department was assigned to supervisor the employees in that department.

7. Area Practice

While the area or industry practice with respect to the appropriateness of the bargaining unit is not a factor set forth in *PCC Structural, Inc.*, supra., the Petitioner asserts that it is relevant here where the Petitioner has represented units comprised of parts department employee and porters for 45 years. However, the Board has held that where other relevant factors predominate, the factor of area practice does not render an otherwise inappropriate unit, which conforms to area practice, as an appropriate one, *The Washington Palm, Inc.*, 314 NLRB 1122, 1128 (1994); *White Front San Francisco, Inc.*, 159 NLRB 681, 683 (1966); *Halle Bros. Co.*, 87 NLRB 369, 370 (1949), or defeat a finding of appropriateness for a unit that does not appear to conform to the prevailing area practice. *J. O. Rhude & Gilbert Corp.*, 106 NLRB 536, 538 fn.7 (1953); and *John W. Thomas & Co.*, 104 NLRB 868, 869 fn. 3 (1953). Here, the Petitioner asserts, and in essence relies exclusively on, the area practice in the automotive dealership industry in the area for seeking a unit of sales porters, services porters, and parts department

employees, despite the lack of evidence showing any community of interest between the three classifications.

III. CONCLUSION

In determining that the unit sought by Petitioner is not appropriate, I have carefully weighed the community-of-interest factors cited in *PCC Structural, Inc.*, supra. I conclude that the unit sought by Petitioner is not appropriate because the record reveals that the porters and the parts employees have distinct supervision, job duties, minimal interaction and interchange, no integration of job functions, and work in different departments. In view of my conclusion that the unit sought by Petitioner is not appropriate, and where the Employer concedes that the sales and service porters and shuttle driver share a community of interest, I conclude that two units are appropriate: a parts department unit and a porter unit.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein³.
3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. During the hearing when the Petitioner was asked if it wished to proceed to an election if the Regional Director ordered an election in a unit different than the petitioned-for

³ The Employer, Jerry Ackerman Motor Company, Inc., a Missouri corporation with its principal offices and sole facility located at 3636 S. Kingshighway Blvd, St. Louis, Missouri, is engaged in the retail sale and service of new and used automobiles. During the past 12 months, which period is representative of its operations, the Employer derived gross revenues in excess of \$500,000 from the operation of its automobile dealership, and purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Missouri.

unit, the Petitioner indicated that it wished to proceed to an election in any unit found appropriate. Thus, I find that two separate bargaining units are appropriate. The following employees of the Employer constitute Units A and B, both units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A: All full-time and regular part-time sales and service porters and shuttle driver employed by the Employer at its St. Louis, Missouri facility EXCLUDING all other employees, office clericals and professional employees, guards and supervisors as defined in the Act.

Unit B: All full-time and regular part-time parts countermen and parts drivers/parts counter trainees employed by the Employer at its St. Louis, Missouri facility EXCLUDING all other employees, office clerical and professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the two separate units found appropriate above. Employees in both Unit A and Unit B will vote whether or not they wish to be represented for purposes of collective bargaining by Automotive, Petroleum, Allied Industries and Airline Employees Union Local No. 618.

A. Election Details

The election will be held on Friday, August 17, 2018 from 10:30 to 11:30 a.m. at the break room at the Employer's facility located at 3636 S. Kingshighway Blvd., St. Louis, Missouri.

B. Voting Eligibility

Eligible to vote are those in the two units who were employed during the payroll period ending August 1, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer will provide a separate election eligibility list for each unit.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file, and service on the parties, the voter list with the Regional Office. In the instance case, the Petitioner waived its right to have the voter list for the 10-day period or for any shorter period of time. The Petitioner has thus waived its right to file objections to the elections based on the fact that it will not have the voter list for the 10 day period.

To be timely filed and served, the list must be *received* by the regional director and the parties by **August 10, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Jerry Ackerman Toyota
Case 14-RC-224185

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 8, 2018.

/s/ Leonard J. Perez

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
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Saint Louis, MO 63103-2829